



Kevin P. Mulry
Partner

Direct Dial: 516.227.0620
Direct Fax: 516.336.2262
kmulry@farrellfritz.com

1320 RXR Plaza
Uniondale, NY 11556
www.farrellfritz.com

Our File No.
32041-100

January 3, 2017

BY ECF

Honorable Joseph F. Bianco
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JAN 04 2017 ★

LONG ISLAND OFFICE

Re: United States v. Kenner, 13-cr-607 (JFB)

Dear Judge Bianco:

Farrell Fritz, P.C. and Pepper Hamilton LLP represent Diamante Cabo San Lucas, LLC, Kenneth Jowdy, KAJ Holdings, LLC, Diamante Properties, LLC, and Diamante Cabo San Lucas S. De R.L. De C.V. (collectively, the "DCSL Parties"). On December 13, 2017, the DCSL Parties submitted: (1) an application (a) for relief from the Post-Conviction Protective Order dated August 21, 2015, DN 330 (the "Protective Order"); (b) for approval of the settlement of civil actions pending in the Delaware Court of Chancery; and (c) for approval of the proposed sale of a parcel of the DCSL property for the San Marcos Condominium Development; and (2) an opposition to the Government's Letter dated November 1, 2016, DN 408, which sought access to the DCSL property, compelled interviews of individuals and on-site inspection of documents in Mexico.

The Government filed a memorandum on December 22, 2017, DN 425, which opposed the DCSL Parties application with respect to the modification of the Protective Order, approval of the Delaware settlement and approval of the sale of a parcel of the DCSL Property, and presented arguments in support of their request for discovery, purportedly based on the Protective Order.

The DCSL Parties respectfully request the opportunity to submit a reply memorandum, and are prepared to do so by Wednesday, January 4. The Government does not consent to this request, on the ground that "[s]ince it was [the Government's] motion to enforce the protective order, a sur-reply is not permitted."

First, the application for relief from the Protective Order and approval of the Delaware settlement and parcel sale was made by the DCSL Parties, not the Government. There has been no reply on that application.

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Second, a reply should be permitted on the Government request for access to the DCSL Property in Mexico. The Government's November 1 letter, DN 408, contained two conclusory paragraphs seeking to enforce the Protective Order. The DCSL Parties submitted a response to that letter, DN 409, and as directed by the Court, addressed its arguments in opposition to the Government request in its December 13 submission. The Government's December 22 memorandum presents new arguments on its request for a site visit over five pages, DN 425 at 2-6, that go well beyond its November 1 letter.

For these reasons, the DCSL Parties respectfully request that they be permitted to submit a reply memorandum by Wednesday, January 4, 2017.

Respectfully submitted,

s/ Kevin P. Mulry

Kevin P. Mulry

cc: All counsel (By ECF)
Thomas McC. Souther, Esq. (By E-mail)

Request granted.

S/ Joseph F. Bianco
Joseph F. Bianco
USDU
Date: *Jan. 4* 20 *17*
Central Islip, N.Y.